

United States
Circuit Court of Appeals
For the Ninth Circuit.

C. F. PETERSON,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Territory of Alaska,
Third Division.

FILED
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FBI - ALASKA

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit in Support of Plea in Bar.....	19
Assignment of Errors	59
Bail Bond Pending Writ of Error.....	54
Bill of Exceptions	4
Certificate of Clerk U. S. District Court to Transcript of Record.....	77
Certificate of Justice (Bill of Exceptions)....	18
Citation on Writ of Error (Copy).....	76
Citation on Writ of Error (Original).....	74
Complaint for the Violation of the Act of Congress, Approved February 14, 1917, Known as the Alaska Dry Law (Bill of Exceptions)	6
Instructions of Court to Jury.....	43
Judgment and Sentence	52
Motion in Arrest of Judgment.....	50
Names and Addresses of Attorneys of Record..	1
Notice of Appeal (Bill of Exceptions).....	11
Notice of Presentation of Bill of Exceptions for Settlement and Certification	3
Order Allowing Writ of Error.....	68
Order Denying Motion in Arrest of Judgment.	51

Index.	Page
Order Settling and Certifying Bill of Exceptions	56
Petition for Writ of Error	66
Praecipe for Transcript of Record.....	1
TESTIMONY ON BEHALF OF THE GOVERNMENT:	
HOFFMAN, FRANK	24
Cross-examination	32
MOSSMAN, C. W.	33
WATSON, CHARLES A.	38
Cross-examination	41
Transcript of Evidence.....	21
Undertaking for Costs	70
Undertaking on Appeal (Bill of Exceptions) ..	14
Verdict	49
Writ of Error.....	72

Names and Addresses of Attorneys of Record.

SHERMAN DUGGAN, United States Attorney,
and His Assistants, H. G. McCAIN, of Cordova,
Alaska, and JULIEN A. HURLEY, of Anchorage, Alaska,

Attorneys for Plaintiff and Defendant in
Error.

L. V. RAY, of Seward, Alaska,

Attorney for Defendant and Plaintiff in
Error. [1*]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare, authenticate and certify for filing in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, upon the writ of error heretofore issued in the above-entitled cause, the following papers, pleadings and records on file in said case, to wit:

*Page-number appearing at foot of page of original certified Transcript of Record.

1. This praecipe.
2. Bill of exceptions.
3. Order settling and certifying bill of exceptions,
4. Assignment of errors.
5. Petition for writ of error.
6. Order allowing writ of error and fixing amount of bond, which shall act as a supersedeas.
7. Appearance bond upon writ of error (approved).
8. Cost bond upon writ of error (approved).
9. Writ of error.
10. Citation on writ of error (original).
11. Citation on writ of error (served copy).

Dated at Valdez, Alaska, this 2d day of November, 1923.

L. V. RAY,
Attorney for Defendant.

Filed in the District Court, Territory of Alaska,
Third Division. Nov. 2, 1923. W. N. Cuddy,
Clerk. By _____, Deputy. [2]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON,

Defendant.

Notice of Presentation of Bill of Exceptions for Settlement and Certification.

To Honorable SHERMAN DUGGAN, United States Attorney for the Territory of Alaska, Third Division:

PLEASE TAKE NOTICE that the undersigned, as attorney for the defendant C. F. Peterson, will on the 24th day of February, 1923, at the hour of ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, present to the Court for settlement and certification the defendant's bill of exceptions in the above-entitled case, a copy of which proposed bill of exceptions is hereto attached and herewith served upon you.

Dated at Valdez, Alaska, this 17 day of February, 1923.

L. V. RAY,
Attorney for the Defendant.

Service of a true copy of the above notice of presentation of bill of exceptions for settlement and certification acknowledged this 19 day of February, 1923.

SHERMAN DUGGAN,
United States Attorney. [3]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA
vs.

C. F. PETERSON,

Defendant.

Bill of Exceptions.

Comes now the above-named defendant and being about to prosecute to the United States Circuit Court of Appeals for the Ninth Circuit a writ of error upon the judgment made and entered by the above-named District Court on the 15th day of December, 1922, prays an order of said District Court, or of the Honorable E. E. Ritchie, Judge thereof, who presided at the trial of said cause and who made and entered said judgment aforesaid, that this bill of exceptions containing the following-named papers, pleadings, proceedings and exceptions in said cause, be filed, settled and certified to as said defendant's bill of exceptions upon said writ of error, to wit:

1. Complaint.
2. Warrant.
3. Transcript docket entries Justice's Court containing judgment and sentence therein.
4. Notice of appeal.
5. Undertaking on appeal.
6. Certificate of Justice.

7. Plea in bar, affidavit in support thereof.
8. Minute order denying plea in bar (in transcript).
9. Transcript of testimony and proceedings at trial.
10. Verdict.
11. Motion in arrest of judgment.
12. Minute order denying motion in arrest of judgment.
13. Judgment and sentence.
14. Bail bond pending writ of error.

True, full and correct copies of all of said papers, pleadings, proceedings and exceptions are hereto attached, and are, by reference herein, inserted in this bill of exceptions.

The defendant prays that the judgment and sentence of said District Court rendered and pronounced against him on December 15th, 1922, in said cause, may be reversed.

Dated at Seward, Alaska, this 17 day of February, 1923.

L. V. RAY,
Attorney for Defendant. [4]

In the United States Commissioner's Court for Knik Precinct, Third Division, Territory of Alaska.

No. 1003.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON.

**Complaint for the Violation of the Act of Congress,
Approved February 14th, 1917, Known as the
Alaska Dry Law.**

(Filed Sept. 21, 1922.)

C. F. Peterson is accused by C. W. Mossman, Deputy United States Marshal, in this complaint of the crime of having intoxicating liquor in his possession, committed as follows:

The said C. F. Peterson, on the 21st day of September, A. D. 1922, in Knik Precinct, in the Territory of Alaska, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully have in his possession intoxicating liquor, to wit, whiskey, commonly called "white mule," in violation of the provisions of the Act of Congress, approved February 14th, 1917, commonly known as the Alaska Dry Law, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

(Signed) C. W. MOSSMAN.

United States of America,
Territory of Alaska,—ss.

I, C. W. Mossman, being first duly sworn, upon oath depose and say that the foregoing complaint is true; and that I am a deputy United States marshall for the Third Division of the Territory of Alaska.

(Signed) C. W. MOSSMAN.

Subscribed and sworn to before me this 21st day
of Sept., 1922.

[Seal] (Signed) W. H. RAGER,
U. S. Commissioner and *Ex-Officio* Justice of the
Peace. [5]

In the United States Commissioner's Court for the
Territory of Alaska, Third Division, at An-
chorage.

United States of America,
Territory of Alaska,—ss.

Filed Sept. 21, 1922.

The President of the United States of America to
the Marshal of the Third Division, of the Ter-
ritory of Alaska, or His Deputy, GREETING.

We command you to apprehend forthwith C. F.
Peterson, who is named in a complaint made on
oath before me this 21st day of September, A. D.
1922, by C. W. Mossman, if he be found in said
District for the crime of having intoxicating liquor
in his possession as is more particularly set forth
in said complaint and bring him before me to an-
swer said complaint, and be further dealt with as
the law directs.

HEREOF FAIL NOT, and make return of this
writ with your doings thereon.

Given under my hand and seal at Anchorage this
21st day of September, 1922.

[Seal] W. H. RAGER,
United States Commissioner and *Ex-Officio* Justice
of the Peace. [6]

In Commissioner's Court, Third Division, Territory
of Alaska, at Anchorage.

Before W. H. RAGER, Commissioner and *Ex-*
Officio Justice of the Peace.

No. 1003.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON,

Defendant.

JULIAN A. HURLEY, Attorney for Plaintiff.

L. V. RAY, Attorney for Defendant.

Sept. 21, 1922. Complaint in writing verified by
C. W. Mossman charging above-
named defendant with the crime
of having intoxicating liquor in
his possession. Filed.

Sept. 21, 1922. Warrant of arrest issued and deliv-
ered to U. S. Marshal for execu-
tion.

Sept. 21, 1922. Marshal returned said warrant of
arrest endorsed as follows:
“The within writ came to hand
September 21, 1922; I executed
same by arrest of within named
defendant and now produce him
in court.

H. P. SULLIVAN,
U. S. Marshal.

By C. W. Mossman,
Deputy.”

Sept. 21, 1922. Defendant in court—Complaint read to defendant. Defendant put in his plea of “Not guilty.”

Sept. 21, 1922. Bail bond in sum of \$1,000.00. Sureties Z. J. Loussac and George Valaer approved and filed.

Sept. 21, 1922. By agreement case set for trial September 27, 1922, at 10 A. M.

Sept. 27, 1922. All parties present in court, including defendant, a jury having been waived, and the case being tried without a jury, before the Court. Witnesses on part of the Government, C. W. Mossman and A. F. Hoffman sworn and testified.

After hearing the evidence in the case and being fully advised in the premises, the Court finds that said C. F. Peterson has been proven guilty of the crime charged in said complaint, and the Court adjudged said defendant guilty of the crime charged in said complaint, to wit: Crime of having intoxicating liquor in his possession, the Court did then and there render and enter judgment of conviction as follows:

[7]

“The above-named defendant, C. F. Peterson, having been

brought before me, W. H. Rager, Commissioner and *Ex-Officio Justice* of the Peace in a Criminal Action, for the crime of having intoxicating liquor in his possession, in violating of Act of Congress, approved February 14, 1917, and the said C. F. Peterson having thereupon pleaded 'Not guilty' and duly tried by me, and upon such trial duly convicted, I have adjudged that said C. F. Peterson be imprisoned in the Federal Jail at Anchorage, Alaska, for a period of One (1) Year and that he pay a fine of One Thousand Dollars (\$1000.00) and further that said C. F. Peterson be imprisoned in the Federal Jail at Anchorage, Alaska, until such fine be satisfied, said imprisonment not to exceed one (1) day for every Two Dollars (\$2.00) of such fine, and that said C. F. Peterson serve one day for every Two Dollars of such fine of \$1000.00 that he shall fail or refuse to pay and being in addition to said imprisonment of one year.

Done in open court, this 27th day of September, 1922.

[Seal] W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace."

Sept. 30, 1922. Notice of appeal.
Sept. 30, 1922. Undertaking on appeal, sum of \$1500.00. Sureties H. M. Evans and Matt Raich approved and filed. [8]

In the Justice's Court for the Territory of Alaska,
Third Division, Knik Precinct, at Anchorage.

No. A. 1003.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON,

Defendant.

Notice of Appeal.

(Filed Sept. 30, 1922.)

To the UNITED STATES OF AMERICA, the Plaintiff in the Above-entitled Action, and to the United States District Attorney for Third Judicial Division, Territory of Alaska, or Any of His Assistants, and to J. A. HURLEY, Assistant United States District Attorney at Anchorage, Alaska, and to the Hon. W. H. RAGER, Justice of the Above-styled Court.

You and each of you will please take notice, that C. F. Peterson, the defendant is the above-entitled action, hereby appeals to the District Court for the Territory of Alaska, Third Division, from the judgment of conviction therein made and entered in the Justice's Court for the Territory of Alaska, Third Division, Knik Precinct, at Anchorage, before the Hon. W. H. Rager, United States Commissioner and *Ex-Officio* Justice of the Peace, on Wednesday, 27th day of September, A. D. 1922, in favor of the plaintiff, United States of America, and against the above-named defendant, C. F. Peterson, and from the whole thereof.

Said judgment of conviction by the Hon. W. H. Rager being that the said defendant C. F. Peterson, be confined and serve one year in the federal jail at Anchorage, Alaska, and also to pay a fine of One Thousand Dollars (\$1000.00) and in lieu of and failure to pay such fine to serve one day for every Two Dollars of such fine until the same is satisfied for the crime of having intoxicating liquor in his possession at Anchorage, Alaska, on the 21st day of September, 1922, and being in violation of the Act known as "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory [9] of Alaska and for other purposes" and approved February 14th, 1917, said Act being commonly known as the Alaska Bone Dry Law, said defendant having been tried by the Court on the 27th day of September, 1922, and found defendant guilty as charged. Said judgment hereby appealed from being in words and figures to wit:

The above-named defendant C. F. Peterson having been brought before me, W. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace, in a criminal action for the crime of having intoxicating liquor in his possession in violation of the Act of Congress approved Feb. 14, 1917, and the said C. F. Peterson having thereupon pleaded "Not guilty" and been duly tried by me and upon such trial duly convicted, I have adjudged that the said C. F. Peterson be imprisoned in the federal jail in Anchorage, Alaska, for a period of one (1) year and that he pay a fine of One Thousand Dollars (\$1000.00) and further that said C. F. Peterson be imprisoned in the federal jail until such fine be satisfied, said imprisonment not to exceed one (1) day for every Two Dollars (\$2.00) of such fine and that said C. F. Peterson serve one day for every Two Dollars (\$2.00) of such fine of \$1000.00 that he shall fail or refuse to pay and being in addition to said imprisonment of one year.

Done in open court this 27th day of September,
1922.

[Seal] W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace.

Said judgment being entered in Criminal Docket No. 4, page 206, in the above-styled court, and being Cause No. 1003.

The defendant C. F. Peterson, by order of the Court, having appeared for sentence on the 27th day of September, 1922, was sentenced as above set out by the Hon. W. H. Rager, the Justice above

named and before whom the trial of the case was had. [10]

This appeal is taken on question of both law and fact.

Dated at Anchorage, Alaska, this 30th day of Sept., 1922.

RAY and DAVID,
Attorneys for Defendant, Anchorage, Alaska.

Service of the above and foregoing notice of appeals admitted and accepted by true copy this 30th day of Sept., 1922.

SHERMAN DUGGAN,
U. S. District Attorney, Third Division, Territory of Alaska.

By JULIEN A. HURLEY,
Assistant U. S. District Attorney, Third Division,
Territory of Alaska. [11]

In the Justice's Court for the Territory of Alaska,
Third Division, Knik Precinct.

No. A. 1003.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON,

Defendant.

Undertaking on Appeal.

Filed Sept. 30, 1922.

The above-entitled cause having been tried on the 27th day of September, 1922, and the above-named defendant C. F. Peterson having been found guilty

as charged in the Justice's Court, Knik Precinct, Third Division, Territory of Alaska, at Anchorage, before Hon. Wm. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace, and a judgment of conviction having been given on the 27th day of September, 1922, by the Hon. Wm. H. Rager, the Justice of the above-styled court, whereby the above-named defendant, C. F. Peterson was condemned to serve one (1) year in the federal jail at Anchorage, Alaska, and also to pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) and in lieu of and failure to pay such fine serve one day for every two dollars of such fine until the same is satisfied for the crime of having intoxicating liquor in his possession on the 21st day of September, 1922, and being in violation of the Act known as "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes," and approved February 14, 1917, said Act commonly known as the Alaska Bone Dry Law. Said judgment hereby appealed from being in words and figures to wit:

The above-named defendant C. F. Peterson being brought before me, W. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace, in a criminal action, for the crime of having intoxicating liquor in his possession in violation of [12] Act of Congress approved Feb. 14, 1917, and the said C. F. Peterson having thereupon plead "not guilty" and been duly tried by me and upon such trial duly convicted. I have ordered and adjudged that said defendant C. F. Peterson be imprisoned in the

federal jail at Anchorage, Alaska, for a period of One (1) year and that he pay a fine of One Thousand Five Hundred dollars (\$1500.00) and further that the said C. F. Peterson be imprisoned in the federal jail until such fine be satisfied, said imprisonment not to exceed one (1) day for every Two Dollars (\$2.00) of such fine and that said C. F. Peterson serve one day for every Two Dollars of such fine that he shall fail or refuse to pay and being in addition to said imprisonment of one year.

Done in open court this 27th day of September, 1922.

W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace.

Said defendant having appealed from said judgment rendered in the Justice's Court, Knik Precinct, Third Division, Territory of Alaska, before Hon. W. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace, to the District Court for the Territory of Alaska, Third Division, and said C. F. Peterson, the above-named defendant having been admitted to bail in the sum of Fifteen Hundred Dollars (\$1500.00),—

NOW, THEREFORE, I, C. F. Peterson, as principal, and H. M. Evans, as resident of Anchorage, Alaska, by occupation a painter, and Matt Raich, a resident of Anchorage, Alaska, by occupation a merchant, as sureties, do hereby undertake that the above-named defendant C. F. Peterson, shall in all respects abide and perform the orders and judgment of the Appellate Court under appeal,

or if he fail to do so in any particular, that we will pay to the United States the sum of Fifteen Hundred Dollars (\$1500.00). [13] We further undertake that the appellant will also pay to the United States all costs and disbursements that may be awarded against him on appeal.

Dated and sealed at Anchorage, Alaska, this 30th day of September, 1922.

C. F. PETERSON, (Seal)

Principal.

H. M. EVANS, (Seal)

Surety.

MATT RAICH, (Seal)

Surety.

United States of America,

Territory of Alaska,—ss.

H. M. Evans and Matt Raich, as sureties named in the foregoing undertaking, being first duly sworn each for himself and not one for the other deposes and says that he signed the foregoing instrument and undertaking; that he is a resident of the Territory of Alaska, that he is not a counsellor or attorney at law, marshal, clerk of the court or officer of any court, that he is worth the sum specified in the undertaking exclusive of property exempt from execution, over and above all his just debts and liabilities.

H. M. EVANS.

MATT RAICH.

Subscribed and sworn to before me this 30th day of Sept., 1922.

[Seal] W. H. RAGER,
Commissioner and *Ex-Officio* Justice of Peace, Knik
Precinct at Anchorage.

Taken and acknowledged before me and approved this 30th day of Sept., 1922.

[Seal] W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace.
[14]

In Commissioner's Court, Third Division, Territory of Alaska, at Anchorage.

Before W. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace.

No. 1003.

UNITED STATES OF AMERICA, Plaintiff,
vs.
C. F. PETERSON, Defendant.

Certificate of Justice.

I HEREBY CERTIFY that the attached, consisting of two (2) pages, is a true and correct transcript of my docket, and contains a copy of all the material entries in my docket relating to said cause and appeal, and is a copy of my docket in the above-entitled action.

I also certify that the annexed and accompanying papers are all the original papers relating to said

cause and appeal and filed with me and being all the papers and pleadings filed in said cause as well as the notice of appeal and undertaking on appeal filed herein:

And for the purpose of identification I FURTHER CERTIFY that said attached papers in said cause and appeal are numbered (in ink) from 1 to 5, both inclusive.

Dated and signed at Anchorage, Alaska, this 30th day of September, A. D. 1922.

[Seal] W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace,
Knik Precinct, at Anchorage.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Sept. 30, 1922.
W. N. Cuddy, Clerk. By Robt. S. Brograw, Deputy.

[15]

In the District Court of the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON.

Affidavit in Support of Plea in Bar.

United States of America,
Territory of Alaska,—ss.

C. F. Peterson, being duly sworn, on oath deposes and says: That he is the defendant in the above action; that defendant is charged in the complaint

on file in said cause with a violation of the provisions of the Alaska Bone Dry Law, so called, in that the said defendant is charged with unlawful possession of intoxicating liquors at or near Anchorage, Alaska, on September 21st, 1922; that judgment was rendered in Justice Court upon said complaint and that the above cause is on appeal from said judgment; that on said September 27th, 1922, at said Anchorage, Alaska, before W. H. Rager, Commissioner and *Ex-officio* Justice of the Peace, affiant was held to answer upon the charge of illegally transporting intoxicating liquors on the 21st day of September, 1922, and for the same liquors so alleged to be intoxicating as constituting the offense of unlawful possession, as aforesaid; that defendant gave bonds for his appearance before the next grand jury for the third division, Territory of Alaska, upon said charge of illegal transportation in violation of the provisions of the National Prohibition Act, all of which more fully appears from the records and files of the above-entitled court.

C. F. PETERSON.

Subscribed and sworn to before me this 28th day of November, A. D. 1922.

[Seal] L. V. RAY,
Notary Public in and for the Territory of Alaska.
My commission expires March 24th, 1926.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 28th, 1922.
W. N. Cuddy, Clerk. [16]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA
vs.

C. F. PETERSON,
Defendant.

Transcript of Evidence.

BE IT REMEMBERED, that the above-entitled cause came on duly and regularly to be heard on Tuesday, the 28th day of November, 1922, at Anchorage, in said Territory and Division, before the Honorable E. E. RITCHIE, Judge of said court, and a jury:

The Government being represented by Honorable Sherman Duggan, United States Attorney, and Julien Hurley, Assistant United States Attorney.

The defendant being represented by his attorney and counsel, L. V. Ray, Esq.

A jury having been empanelled opening statement was made by Mr. Hurley on behalf of the Government; counsel for defendant waiving statement in his behalf.

Whereupon the following additional proceedings were had and done, to wit: [17]

On November 27, 1922, in open court, the following proceedings were had and done:

The COURT.—I have given careful consideration to the defendant's motion for a change of venue

in this case and to the affidavits which have been filed, and I am convinced that he can get a fair trial here in Anchorage. The motion is denied.

Mr. RAY.—Defendant excepts to the action of the Court in denying his motion for change of venue and continuance as a gross abuse of discretion. Exception allowed.

On November 28, 1922, in open court, the following proceedings were had and done:

Mr. RAY.—Defendant Peterson pleads in bar to the complaint on which he is now placed on trial the records and files of this court showing that for the same offense, concerning the same amount of intoxicating liquor, alleged to have been committed at the same time, he is now bound over to the grand jury for violation of the Volstead Act on a felony charge; that the offense for which he is now about to be tried is a misdemeanor and it being the same overt act the felony charge merges the misdemeanor. The affidavit of the defendant Peterson in support of this plea reads as follows:

“In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON.

United States of America,
Territory of Alaska,—ss.

AFFIDAVIT IN SUPPORT OF PLEA IN BAR.

C. F. Peterson, being duly sworn, on oath deposes and says: That he is the defendant in the above action; [18] that defendant is charged in the complaint *of* file in said cause with a violation of the provisions of the Alaska Bone Dry Law, so called, in that the said defendant is charged with unlawful possession of intoxicating liquor at or near Anchorage, Alaska on September 21, 1922; that judgment was rendered in Justice Court upon said complaint and that the above cause is on appeal from said judgment; that on said September 27th, 1922, at said Anchorage, Alaska, before W. H. Rager, U. S. Commissioner and *Ex-officio* Justice of the Peace, affiant was held to answer upon the charge of illegally transporting intoxicating liquors on the 21st day of September, 1922, and for the same liquors so alleged to be intoxicating as constituting the offense of unlawful possession, as aforesaid; that defendant gave bonds for his appearance before the next grand jury for the Third Division, Territory of Alaska, upon said charge of illegal transportation in violation of the provisions of the National Prohibition Act, all of which more fully appears from the records and files of the above-entitled court.

(Signed) C. F. PETERSON.

Subscribed and sworn to before me this 28th day of November, A. D. 1922.

[Seal] (Signed) L. V. RAY,
Notary Public in and for the Territory of Alaska.

My commission expires March 24, 1926.

Filed in the District Court, Territory of Alaska,
Third Division. November 28, 1922. (Signed)
W. N. Cuddy, Clerk."

The COURT.—The plea is denied. The defendant has not yet been tried on the felony charged and I don't see how the fact of his being bound over can affect this charge now. Exception allowed defendant.

Testimony of Frank Hoffman, for the Government.

FRANK HOFFMAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HURLEY.)

Q. What is your name? A. Frank Hoffman.

Q. What official position do you hold?

A. Deputy U. S. Marshal, Third Division.

Q. Where are you located? A. Matanuska.

Mr. RAY.—Defendant objects to the introduction of any testimony of the witness, after being sworn and now on the stand, on ground that this Court is without jurisdiction to try the case on the complaint on file here; first, on the ground [19] that it is in violation of the rights of the defendant as guaranteed to him under the fifth amendment to the Constitution of the United States providing

(Testimony of Frank Hoffman.)

that no prosecution for a felony may be had except on the presentment of a grand jury; and, second, the complaint on which this charge is based is signed "C. W. Mossman," not "C. W. Mossman, deputy marshal," and is, therefore, invalid.

In view of the provisions of sec. 1891, R. S., that "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States" it is our contention that the Alaska Bone Dry Law being a statute of the United States, and the term of imprisonment on a conviction under it may be more than one year, that a case can only be tried after presentment and indictment by a grand jury. I also desire to renew again the plea in abatement which I filed this morning; that the records and files of this Court show that for this same offense, with reference to the same intoxicating liquor, this man is now being held to answer before the grand jury, and that the doctrine of merger should apply. I would just like to read from volume 16, C. J., section 10: "The merger of one offense in another occurs when the same criminal act constitutes both a felony and a misdemeanor. In such a case, at common law, the misdemeanor is merged in the felony, and the latter only is punishable. This doctrine applies only where the same criminal act constitutes both offenses, and where there is identity of time, place, and circumstances. More-

(Testimony of Frank Hoffman.)

over the offenses must be of different grades, and the rule does not apply where both offenses are felonious or misdemeanors.” [20]

The COURT.—At this time I will deny the motion. While I think there is something in one point which Mr. Ray has raised I do not think it should be decided hastily and if I should be wrong in denying the motion at this time the same point can be raised on motion in arrest of judgment. As to the objection to the complaint, I think the description in the body of the complaint of C. W. Mossman, as a deputy United States marshal is sufficient. Defendant, allowed an exception.

Mr. HURLEY.—Were you deputy United States marshal for the Territory of Alaska, Third Division, on September 21, 1922? A. I was.

Q. How long have you been deputy U. S. marshal? A. Eight or nine years.

Q. Where were you on the 21 day of September, this year? A. Here in Anchorage.

Q. Where were you along about half-past six or seven on the morning of the 21 day of September?

A. On Fourth Avenue, Anchorage.

Q. Where did you go from there?

A. I went down to the dock.

Q. What did you do down there?

A. Why, we saw a boat coming on this side above the dock near a point about a mile up when we first saw it.

Q. Could you see there was anyone in it?

A. There was.

(Testimony of Frank Hoffman.)

Q. Did it land at the dock?

A. It landed at this end of the dock.

Q. How far were you from the dock when it landed? A. Quite a distance. [21]

Q. Could you identify any person in the boat at that time? A. No, sir.

Q. What, if anything, did the person in the boat do after it landed?

A. Went into the dock office and after a while came out and he swung out into the stream again and went on.

Q. Where did he go?

A. He went down the bay three or four miles and landed down there.

Q. Did you see the boat land? A. I did.

Q. Who was with you?

A. Mr. Mossman, Mr. Watson and myself.

Q. What did you do when you saw the boat land?

A. We went down there.

Q. What did you do?

A. We went and watched the boat land. Then after the boat landed this party, whoever it was, we saw him make two or three trips to the shore, and we knew he couldn't get away so we went down there and found Chauncey Peterson and the boat; Chauncey was down there on the bank asleep.

Mr. RAY.—Had you a search-warrant when you went down there?

The WITNESS.—We did not.

Mr. RAY.—The defendant objects to the introduction of any further testimony of the witness as

(Testimony of Frank Hoffman.)

to the defendant or the boat on the ground that such evidence attempted to be offered is in plain violation of the constitutional rights of the defendant guaranteed him under the fourth and fifth amendments to the Constitution of the United States.

The COURT.—Objection overruled. Exception allowed. [22]

Mr. HURLEY.—Where was the boat when you got down there?

A. It was lying on the beach, high and dry.

Q. How far were you from it before you first could see it after starting down the beach?

A. There was part of the time we couldn't see it. Just about a mile we had to go through the woods.

Q. The rest of the time you could see? A. Yes.

Q. Did you go up to the boat?

A. Yes, after we found Mr. Peterson there.

Q. You saw him first before going down to the boat? A. Yes, sir.

Q. What was he doing when you first saw him?

A. He was asleep.

Q. And was Mr. Mossman and Mr. Watson with you when you first saw Mr. Peterson there?

A. Yes, sir.

Q. Did you and Mr. Mossman and Mr. Watson all go to the boat together?

A. No, Mr. Watson stayed there on the hill, on the bank.

Q. What did you see in the boat?

A. Its an open boat—a dory—and there were

(Testimony of Frank Hoffman.)

some kegs. They were not all covered; some were not covered. We found ten ten-gallon kegs of white mule.

Q. Was there anything in the boat outside the whiskey?

A. Oh, odds and ends, you see, and on the beach there he was cooking. There was a shotgun and he had an Evinrude engine on the boat.

Q. Have you ever examined any of the whisky you found in the boat?

A. We did at that time. [23]

Q. What did you do with it?

A. We brought it into town. We waited around till the tide got right and then Watson, Peterson and myself got the boat off and we came into town in it.

Q. Have you that liquor here? A. Yes, sir.

Q. Will you produce it? A. Yes, sir.

Q. I call your attention to these kegs that have just been brought into court and ask you what they are?

A. Nine of them are white mule and the other is empty—it broke.

Q. Was the empty one full when you started with it from the boat? A. It was.

Q. And when was it emptied?

A. While we were loading it on the truck it rolled off and spilled all over the sidewalk.

Q. And are those the kegs and contents you got on the boat? A. Yes.

Q. Now what do they contain?

(Testimony of Frank Hoffman.)

A. White mule.

Q. Is that an intoxicating liquor? A. It is.

Mr. HURLEY.—We offer in evidence the nine or ten kegs with their contents.

Mr. RAY.—The defendant makes the same objection.

The COURT.—They will be admitted.

Ten kegs and contents admitted in evidence and marked Plaintiff's Exhibits "A" to "J," inclusive.

Mr. HURLEY.—If the Court please, at this time I would like to pour out some of the contents and let the jurors examine it.

Mr. RAY.—The defendant objects to the liquid being passed around to the jurors; it makes them witnesses.

The COURT.—Objection overruled. Exception allowed. [24]

Q. I believe you stated that Mr. Watson stayed with Mr. Peterson and you and Mr. Mossman went to the boat? A. Yes, sir.

Q. And how far were Mr. Peterson and Mr. Watson from the boat when you went with Mr. Mossman down to the boat?

A. About sixty feet, more or less. From the boat do you mean?

Q. Yes.

A. Not more than sixty feet, a short distance.

Q. When you and Mr. Mossman came back to where Mr. Peterson and Mr. Watson were had you any conversation there with Peterson at that time?

A. Yes.

(Testimony of Frank Hoffman.)

Q. What was said by Mr. Peterson and you at that time?

Mr. RAY.—We object to any conversation had by the defendant and officers at that time.

The COURT.—You may find out whether he was under arrest at the time or whether he made a voluntary statement.

Mr. RAY.—Was Peterson under arrest at the time of your conversation with him?

The WITNESS.—Yes, I think so.

Q. Did you tell him that you would testify as to anything he might say? A. I did not.

Q. Did you advise him that whatever he said would be used against him on the trial of the case?

A. It was a general conversation.

Q. At no time did you yourself tell him that anything you say might be used against you at the trial of the case?

A. No, sir; nothing like that was said.

Mr. RAY.—We object to the conversation. [25]

The COURT.—Did you offer him any inducement of any kind or try to persuade him to talk.

A. His conversation was voluntary.

The COURT.—The objection is overruled. Exception allowed.

A. He just told us he had been out in the boat all night fighting this Evinrude engine and was all in.

Q. Did this boat have an Evinrude engine?

A. Yes, sir.

Mr. HURLEY.—That is all.

Mr. RAY.—We ask that the witness Hoffman's

(Testimony of Frank Hoffman.)

testimony be stricken on the ground that the same was obtained, first in violation of the constitutional rights of the defendant as guaranteed in the fourth and fifth amendments and, further, that some statement was obtained from the defendant by the officers without his first being warned or advised as to his rights.

The COURT.—The motion is denied. Exception allowed.

Cross-examination.

(By Mr. RAY.)

Q. You say the bank was about fifty or sixty feet high? A. More or less, it was quite steep.

Q. There is quite a run out to the tide there?

A. Some distance.

Q. Ten or twenty feet?

A. Oh, more than that.

Q. A thousand feet?

A. No, about halfway across the street, I should judge.

Q. And Peterson was up on the bank?

A. Yes, sir.

Q. Was anyone else there? A. No, sir.

Q. Look for anyone else there? A. No, sir.

Mr. RAY.—That is all.

Witness excused. [26]

Testimony of C. W. Mossman, for the Government.

C. W. MOSSMAN, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination.

(By Mr. HURLEY.)

Q. What, if any, position do you hold in Anchorage, Alaska? A. Deputy United States marshal.

Q. Third Division? A. Yes, sir.

Q. How long have you been deputy U. S. marshal?

A. Nine years.

Q. Were you such on September 21, 1922?

A. I was.

Q. Are you the same C. W. Mossman that signed the complaint that is filed in this case? A. I am.

Q. Where were you on the morning of the 21 day of September this year?

A. Well, early in the morning I was on the waterfront in the vicinity of Anchorage.

Q. What were you doing at that time?

A. We were out in the way of our business.

Q. Who was with you?

A. Mr. Hoffman and Mr. Watson.

Q. What did you do after going to the waterfront?

A. For some time we observed the motions and activity of a rowboat that we saw in the bay at a distance.

Q. Where did the boat go?

A. We watched it for some time and it landed alongside the dock, the ocean dock, being where the

(Testimony of C. W. Mossman.)

steamers land, and went up a bank to the approach to the dock there and went into the dock office.

Q. Who went into the dock office?

A. The occupant of the boat that we had been watching. [27]

Q. Then what did he do?

A. He stayed a few minutes and then came out and ran toward us and down to a point opposite the boat, and then to the boat.

Q. How far were you from the dock when you saw the boat land?

A. We were close to the dock, this end of the dock. The distance to me would be close to a quarter of a mile.

Q. Now what happened?

A. He turned the boat loose and went out into the stream. The tide was going out. He rowed the boat across the cannery dock and mouth of Ship Creek and continued along the waterfront; went along the mouth of Chester Creek and continued close to the shore a distance by air line of possibly a mile and a half or two miles from Chester Creek.

Q. Then what did the occupant do?

A. He carried something ashore. We were observing him by eyesight and a pair of glasses. He carried something ashore which we could not identify. We could see the smoke of a fire and then it was necessary for us to go around the beach and to a point opposite the boat, it being then high and dry.

(Testimony of C. W. Mossman.)

Q. Go ahead then and state what you did.

A. We proceeded along the bank to a point more or less directly opposite the boat and we found the defendant Peterson there with his bedding asleep. We uncovered his face so we could recognize him.

Q. Who was with you then?

A. Mr. Hoffman and Mr. Watson.

Q. What did you do?

A. We saw who it was and Hoffman and I proceeded down the bank. [28]

Mr. RAY.—Had you a search-warrant when you went down there?

The WITNESS.—No, sir.

Q. You watched the activities of this person for two or three hours?

A. We were not in sight of him all that time.

Q. Well, as you have described in your testimony? A. Yes, sir.

Mr. RAY.—We object to any further testimony from the witness on the stand.

The COURT.—Objection overruled. Exception allowed.

Mr. HURLEY.—Up until the time that you went down and found Mr. Peterson asleep on the bank did you see or know there was any liquor in the boat? A. No, sir.

Q. You didn't know anything about it at that time? A. No, sir.

Q. Now, you have stated that Mr. Watson stayed with Mr. Peterson, and you and Mr. Hoffman proceeded down the bank to the boat? A. Yes, sir.

(Testimony of C. W. Mossman.)

Q. Was there a fire there? A. No, sir.

Q. Was there a fire on the bank any place?

A. No, sir, the fire had burned out.

Q. About how far was it that Peterson was, that you saw the evidence of the fire you had observed before, to where the boat was?

A. It is rather hard to gauge distances, but it is probably a matter of thirty yards, possibly twenty-five yards. On a straight line I could gauge the distance more accurately. [29]

Q. Now state what you did after you and Mr. Hoffman went down to the boat?

A. We went down this hill and to the boat—headed for the beach and went out to the boat—and found ten ten-gallon kegs of whiskey and some ducks, maybe six or eight.

Q. I wish you would observe these kegs and I will ask you if you know what they are and what they contain? A. I do.

Q. What? A. Whiskey.

Q. How many gallons are there there?

A. Ninety gallons there.

Q. I call your attention to the empty barrel; can you explain how that happened to be empty?

A. After the boys came back with the boat I had a truck go to Ship Creek and they loaded the liquor and took it to my office, and I carelessly let it fall down and it broke.

Q. Have you examined the contents of these barrels? A. I have, yes, sir.

Q. Do you know what they contain?

(Testimony of C. W. Mossman.)

A. Yes, sir.

Q. What? A. Whiskey.

Q. Is the contents of these barrels intoxicating liquor? A. Yes, sir, it is.

Q. Are these barrels and the contents the same as you took from Mr. Peterson that morning?

Mr. RAY.—We object.

The COURT.—Objection overruled. Exception allowed.

A. They are. [30]

Q. And you say that you know of your own knowledge that the contents of these barrels are intoxicating liquors? A. They are.

Mr. RAY.—We move that the testimony of the witness Mossman be stricken and that the jury be instructed to disregard any testimony with reference to the defendant Peterson and any boat or the contents taken without a search-warrant first served in violation of the fourth and fifth amendment to the Constitution of the United States.

The COURT.—The motion is denied. Defendant allowed an exception.

Mr. RAY.—We have no cross-examination.

Witness excused. [31]

Testimony of Charles A. Watson, for the Government.

CHARLES A. WATSON, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination.

(By Mr. HURLEY.)

Q. What official position do you hold in the Third Division, Territory of Alaska?

A. Deputy U. S. marshal.

Q. Were you a deputy United States marshal on the 21 day of September, 1922? A. I was.

Q. Where were you on the morning of the 21 day of September?

A. I was here in Anchorage.

Q. Where were you along about seven o'clock that morning?

A. Well, between six and seven we went down to the waterfront.

Q. What did you observe there?

A. We observed a boat coming into the ocean dock.

Q. Was there anybody in the boat?

A. We saw a man in the boat.

Q. Just state what the man in the boat did at that time?

A. We saw the boat land at this side of the dock. He got out of the boat and went to the dock. He came hurrying back and hurried away.

Q. Did you recognize who was in the boat at that time? A. No, sir.

(Testimony of Charles A. Watson.)

Q. What did the occupant of the boat do then?

A. After getting back in the boat he came down stream, on across the creek and kept going down until a few miles below Chester Creek, and pulled in there and stopped.

Q. Did you see a man there? A. Yes, sir.

Q. See him get out? A. Yes, sir. [32]

Q. Did you observe anything else?

A. We saw him make a trip or two to the bank and back.

Q. Did you recognize anything or body in the boat? A. No, sir.

Q. Did you know what was in the boat?

A. No, sir.

Q. Just state what you and Mr. Hoffman and Mr. Mossman did?

A. We could see that a fire had been built; here was the smoke. The boat was on the beach. We had to go around a bit and we went down to where the boat was and there we found Chauncey asleep on the bank.

Q. What did you do?

A. Mr. Hoffman pulled a blanket off him to see who he was, and Mr. Hoffman and Mr. Mossman went down to the boat. I stayed on the bank with Peterson.

Q. Had you been down at that time to see what was in the boat? A. No, sir.

Q. At that time, and before you went down to the boat—before Mr. Hoffman and Mr. Mossman returned—did Mr. Peterson, the defendant, make any

(Testimony of Charles A. Watson.)

voluntary statements to you in regard to the boat of any kind?

Mr. RAY.—Just a minute, had you a warrant?

A. No, sir.

Q. Had you placed him under arrest?

A. No, sir.

Q. Was he under arrest while you were talking to him?

A. I don't know that I told him he was.

Q. You in no manner advised him or warned him that any conversation would be used against him? A. I did not.

Mr. RAY.—We object to any conversation.

The COURT.—Objection overruled. Exception allowed. [33]

Q. What statements, if any, did Mr. Peterson make to you at that time?

A. Well, he was about all in he said; he had been out all night shooting ducks and had no sleep for two days. He was all in; played out.

Q. Did he say anything about what was in the boat?

A. I believe he said that he had thirty-five or forty ducks. I don't remember whether he said anything about the booze. I don't remember just what it was. Yes, I remember; I said, "Have you anything in the boat" and he said, "A hundred gallons."

Q. Did you go down to the boat before Mr. Mossman and Mr. Hoffman returned?

(Testimony of Charles A. Watson.)

A. No, sir; after they returned I went down. We had lunch and built a fire.

Q. Then what did you do?

A. We waited there until the tide got right, got in the boat and came back.

Q. Who came back?

A. All of us, Mr. Hoffman, Mr. Peterson and myself.

Q. I wish you would examine these exhibits and state what they are, if you know.

A. White mule, whiskey.

Q. Where did these barrels come from?

A. They came from the boat we brought in.

Q. When was the first time you saw the barrels?

A. After we had lunch I went back down to the boat. I saw the ducks there and built a fire and had lunch there.

Q. Have you examined the contents of these barrels? A. Yes, sir, part of them. [34]

Q. Do you know what they contain?

A. Whiskey, commonly called white mule.

Q. Is that an intoxicating liquor? A. Yes, sir.
Mr. HURLEY.—That is all.

Cross-examination.

(By Mr. RAY.)

Q. You say there were thirty-five or forty ducks in the boat?

A. That was what he said, I didn't count them.

Q. Did you hear Mr. Hoffman say there were five or six ducks in the boat?

(Testimony of Charles A. Watson.)

A. I didn't hear Mr. Hoffman say anything.

Q. You don't recall the conversation you had with Chauncey down there? A. No, he was tired.

Q. When was the last time you talked with any officer connected with the district attorney's office about what Chauncey said to you?

A. I don't remember I said anything; not since he was arrested.

Q. It has not been recently? A. No, sir.

Q. You said nothing to Peterson to the effect that he was under arrest and that you would be obliged to use any statement he might make against him?

A. No, sir.

Q. And, of course, you didn't talk with him for the purpose of testifying? A. No, I didn't.

Q. You are just testifying as to your recollection of what occurred down there? A. Yes, sir.

Mr. RAY.—That is all.

Witness excused.

Government rests. [35]

Mr. RAY.—The defendant moves to direct a verdict on the grounds,

1. That there is no testimony in this case to prove ownership or possession by the defendant Peterson of the liquor introduced in evidence.

2. That there is no testimony of ownership of the boat in Peterson.

3. That there is no testimony in the case tending to connect the defendant with the commission of this offense, and for the further reason that the testimony sought to be introduced has its basis in an

illegal search and seizure in contravention to the Constitution of the United States.

The COURT.—The motion is denied. Defendant allowed an exception.

Mr. RAY.—The defendant has no testimony to offer.

WHEREUPON, after argument by Sherman Duggan, Esq., in behalf of the Government—counsel for defendant waiving argument—the Court instructed the jury. [36]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON.

Instructions of Court to Jury.

Gentlemen of the Jury:

The defendant in this case is charged with violation of the Alaska Bone Dry Act; by having in his possession intoxicating liquor within the jurisdiction of this court on September 21, 1922.

In order to find the defendant guilty it is necessary that you find every material element of the complaint proven. You must find that he had the liquid charged to be white mule in his possession and you must also find that it was intoxicating liquor.

It is not necessary to find that the offense was committed, if it was committed, at the precise time stated in the complaint; it is only necessary to find that it was committed within two years next preceding the filing of the complaint.

You are instructed that the complaint in this case is a mere accusation or charge against the defendant and is not of itself any evidence of the defendant's guilt, and no juror should permit himself to be influenced against the defendant because the complaint has been filed against him.

In this case, as in all criminal cases, the judge and jury have separate functions to perform. It is your duty to [37] hear all the evidence, all of which is addressed to you, and thereupon to decide and determine the questions of fact arising from the evidence. It is the duty of the judge to decide the questions of the law involved in the trial of the case, and the law makes it your duty to accept as law what is laid down as such by the Court in these instructions. But your power of judging the effect of the evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

The jury are instructed that the law presumes every defendant in a criminal trial to be innocent until his guilt is proven to the satisfaction of the jury beyond all reasonable doubt. The burden of proving beyond all reasonable doubt every material allegation necessary to establish the defendant's guilt rests upon the prosecution throughout the trial, and the burden of proof never shifts to the

defendant. His presumption of innocence is a right guaranteed to him by law and must be given full force and effect by you until you become satisfied from a consideration of all the evidence in the case of his guilt beyond all reasonable doubt.

A reasonable doubt is such a doubt as may fairly and naturally arise in your minds after fully and fairly considering all the evidence in the case. It is that state of the case which leaves the minds of the jurors, after comparison and consideration of all the evidence in such condition that they cannot say they feel an abiding conviction to a moral certainty of the guilt of the defendant. A moral certainty is not an absolute certainty, but such a certainty as excludes every reasonable hypothesis creating a doubt. [38]

It is your duty to give to the testimony of each and all the witnesses such credit as you consider their testimony justly entitled to receive, and in doing so you should not regard the remarks or expressions of counsel, unless the same are in conformity with the facts proven, or are reasonably deducible from such facts and the law as given to you in these instructions.

You are instructed that the evidence is to be estimated not only by its own intrinsic weight, but also according to the testimony which it is within the power of one side to produce and of the other side to contradict, and therefore, if the weaker and less satisfying evidence is produced when it appears that it was within the power of the party offering the same to produce stronger and more satisfying

evidence, such evidence, if so offered, should be viewed with distrust.

In determining the credit you will give a witness and the weight and value you will attach to a witness' testimony, you should take into consideration the conduct and appearance of the witness upon the witness-stand; the interest of the witness, if any, in the result of the trial, the motives of the witness in testifying; the witness' relation to or feeling for or against the defendant; the probability or the improbability of the witness' statements; the opportunity the witness had to observe and to be informed as to the matters respecting which such witness gives testimony, and the inclination of the witness to speak the truth, or otherwise, as to matters within the knowledge of such witness; and you should be slow to believe that any witness has testified falsely, but should try to reconcile the testimony of all the [39] witnesses so as to give credit and weight to all the testimony, if possible. All these matters being taken into account, with all the facts and circumstances given in evidence, it is your province to give to each witness such credit, and the testimony of each witness such value and weight, as you deem proper.

You are not bound to find in conformity with the testimony of any number of witnesses which does not produce conviction in your minds, against a less number, or against a presumption or other evidence satisfying your minds.

You are also instructed that a witness who is wilfully false in one part of his testimony may be

distrusted by you in other parts. If you find that any witness in this case has wilfully testified falsely in one part of his testimony you are at liberty to reject all or any part of his testimony, but you are not bound to do so. You should reject the false part and may give such weight to other parts as you think they are entitled to receive.

The defendant in this trial has waived his right to become a witness in his own defense. It is his privilege, given him by law, to testify or not as he may see fit. The law provides that this waiver of the right to testify shall not create any presumption against him.

You are instructed that the failure of the defendant to testify in his own behalf is not to be considered by you in any way whatever in considering the question of his guilt or innocence. You are to consider that solely upon the evidence in the case.

The presumption of innocence is carried with the defendant throughout the trial. [40]

You are instructed that you should not consider any evidence sought to be introduced but excluded by the Court, nor should you consider any evidence that has been stricken from the record by the Court, nor should you consider in reaching your verdict any knowledge or information known to you, not derived from the evidence as given by the witnesses upon the witness-stand.

You should not allow prejudice or sympathy to swerve you in reaching a verdict according to the evidence and the law as given to you by the Court. Whatever verdict is warranted under the evidence

and instructions of the Court, you should return, as you have sworn to do.

I hand you with these instructions the original complaint in the cause, and a form of verdict which you may use after arriving at a verdict. If you find the defendant not guilty you will write in the word "not" in the blank space before the word "guilty," if you find him guilty, you will draw a line through the blank space.

When you have arrived at a verdict you will cause the same to be signed by your foreman and return it into court.

(Signed) E. E. RITCHIE,
District Judge.

Mr. RAY.—The defendant excepts to the instructions on page five (page — herein), which has reference to the waiver of the defendant to take the stand in his defense, reading as follows:

"The defendant in this trial has waived his right to become a witness in his own defense. It is his privilege, given him by law, to testify or not as he may see fit. The law provides that his waiver of the right to testify shall not create any presumption against him.

You are instructed that the failure of the defendant [41] to testify in his own behalf is not to be considered by you in any way whatever in considering the question of his guilt or innocence. You are to consider that solely upon the evidence in this case.

The presumption of innocence is carried with the defendant throughout the trial."

Exception allowed.

WHEREUPON, the jury retired to deliberate on their verdict.

Case closed. [42]

I do certify that I am the official court reporter for the Third Division, Territory of Alaska; that as such I reported the proceedings had at the trial of the above-entitled cause, to wit: United States of America versus C. F. Peterson, No. 881—Criminal; that the foregoing transcript is a full, true and correct transcript of the evidence introduced and the proceedings had at the trial of said cause.

Dated at Valdez, Alaska, this ninth day of January, 1922.

(Signed) J. W. LENAHAN. [43]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Verdict.

We, the jury duly empanelled and sworn in the above-entitled cause, do find the defendant guilty, as charged in the complaint.

H. I. STAGER,
Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 28th, 1922.
W. N. Cuddy, Clerk. [44]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Motion in Arrest of Judgment.

Comes now the above-named defendant, by his attorneys of record, and prays the Court that no judgment be rendered against him on the verdict of "guilty" heretofore returned into court in said cause: in that the facts stated in the complaint upon which said defendant was placed on trial do not constitute a crime, and that said court is without jurisdiction to render judgment against said defendant.

Dated, Anchorage, Alaska, November 28, 1922.

C. F. PETERSON,
By L. V. RAY,
His Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 28, 1922.
W. N. Cuddy, Clerk.

2199.

2207.

2282. [45]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

M. O.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON,

Defendant.

Order Denying Motion in Arrest of Judgment.

This matter came on for hearing on motion of L. V. Ray, Esq., counsel for the defendant, in arrest of judgment, the defendant being present in person and represented by his counsel, L. V. Ray, Esq.; the plaintiff being represented by Sherman Duggan, Esq., United States Attorney.

WHEREUPON, after argument, the motion was denied. [46]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERTCA

vs.

C. F. PETERSON,

Defendant.

Judgment and Sentence.

This cause coming on to be heard before this Court on the 15th day of December A. D. 1922, and the plaintiff, United States of America, appearing and being represented by Sherman Duggan, United States Attorney, and the defendant being personally present in open court, in the custody of the United States Marshal, and appearing by and being represented by his attorney, L. V. Ray, and the Court having fixed this date as the time to pass sentence and pronounce judgment upon defendant, C. F. Peterson, in this action, and it appearing to the Court:

That defendant, C. F. Peterson, was convicted of the crime of having intoxicating liquor in his possession in violation of the Act of Congress, approved February 14, 1917, known as the Alaska Dry Law, in the court of the United States Commissioner for Knik Precinct, Third Division, Territory of Alaska, and thereupon appealed said cause to this Court.

That on the 28th day of November, 1922, at the November 10th, 1922, term of the above-entitled court, held at Anchorage, Third Division, Territory of Alaska, defendant being personally present in court and being represented by L. V. Ray, his attorney, and Sherman Duggan, United States Attorney, appearing for and representing plaintiff, and defendant then and there having been duly tried by a jury, and having been by said jury in said Court duly and regularly convicted, and the Court

finding in accordance with said verdict of said jury that defendant is guilty and this being the time and place set and agreed upon for sentence and judgment in the above-entitled action, upon said verdict of guilty against said defendant, and defendant at this time being present in person and [47] by his attorney L. V. Ray, and being asked by the Court if he had any reason to give or suggest to the Court why judgment should not be pronounced upon him according to law, and defendant then and there showing no valid reason or excuse in that behalf, and the Court being fully advised,—

IT IS ORDERED AND ADJUDGED that as punishment for the offense above set forth, you, C. F. Peterson, the said defendant, be imprisoned for the term of one (1) year in the federal jail at Anchorage, Third Division, Territory of Alaska, and that in addition thereto you pay a fine in the sum of One Thousand and no/100 (\$1000) Dollars, and in default of the payment of such fine you serve a term in the above-named federal jail not to exceed one (1) day for each \$2.00 of said fine unpaid, and that in addition to said imprisonment and fine you pay the costs of this action, taxed at \$ No and the United States marshal be and he is hereby ordered and instructed, in pursuance of the judgment herein rendered, to take said C. F. Peterson, defendant, into custody, in execution of said sentence. A certified copy of this judgment is a sufficient commitment to the United States marshal, Third Division, Territory of Alaska, to take

said defendant into custody and to carry out said judgment and sentence.

Done in open court at Anchorage, Alaska, this 15th day of December, 1922.

E. E. RITCHIE,
Judge of the District Court, Third Division, Terri-
tory of Alaska. [48]

In the District Court for the Territory of Alaska,
Third Division.

No. 881.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON,

Defendant.

Bail Bond Pending Writ of Error.

We, C. F. Peterson, Z. J. Loussac and P. O. Sundberg, jointly and severally, acknowledge ourselves indebted to the United States of America, in the sum of \$2,000.00, lawful money of the United States of America, to be levied on our, and each of our goods, chattels, lands and tenements, upon this condition:

WHEREAS, the said C. F. Peterson has sued out a Writ of Error from the judgment of the District Court for the Territory of Alaska, Third Division, in the case in said court wherein the United States of America was plaintiff and the

said C. F. Peterson is defendant, for a review of said judgment in the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, if the said C. F. Peterson shall appear and surrender himself in the District Court for the Territory of Alaska, Third Division, on and after filing in said District Court of the mandate of the said Circuit Court of Appeals, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in said United States Circuit Court of Appeals for the Ninth Circuit, and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

WITNESS our hands and seals, this 28th day of December, 1922.

C. F. PETERSON. (Seal)

P. O. SUNDBERG. (Seal)

Z. J. LOUSSAC. (Seal)

Taken and approved, this 29th day of December, 1922, before me,

E. E. RITCHIE,
District Judge. [49]

United States of America,
Territory of Alaska,—ss.

We, Z. J. Loussac and P. O. Sundberg, sureties on the foregoing bond, each for self and not one

for the other, being severally duly sworn, deposes and says that he is a resident of the Territory of Alaska; that he is not a counselor or attorney at law, commissioner, marshal, clerk, or any other officer of any court; that he is worth the amount of \$2,000.00 over and above all his just debts and liabilities and exclusive of property exempt from execution.

P. O. SUNDBERG.
Z. J. LOUSSAC.

Subscribed and sworn to before me this 29th day of December, 1922.

E. E. RITCHIE,
District Judge. [50]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Order Settling and Certifying Bill of Exceptions.

This cause having come on for hearing upon motion of defendant for an order settling and certifying his bill of exceptions to be used upon his writ of error, about to be prosecuted in said cause to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence

made and pronounced herein on the 15th day of December, 1922, against the defendant, upon a verdict of guilty of wilfully and unlawfully having in his possession intoxicating liquor in violation of the provisions of the Act of Congress, approved February 14th, 1917, commonly known as the Alaska Dry Law, said offense being alleged in the complaint thereof as of the 21st day of September, A. D. 1922; and, it appearing that said defendant filing herein his proposed bill of exceptions, served the same upon counsel for the United States, giving due notice of the date and place of settlement of said bill of exceptions, and no amendments or objections to said bill of exceptions having been made by the United States, and, the undersigned Judge of said District Court having inspected and considered the same, and found such bill of exceptions to contain all the papers, pleadings, proceedings and exceptions necessary to a determination of the questions involved and raised by defendant's exceptions,—

It is therefore ordered that the foregoing bill of exceptions be and the same is hereby allowed, approved and settled, and that the same shall constitute defendant's bill of exceptions upon the prosecution of his writ of error in said cause; [51]

And, it is further ordered that this order shall be deemed and shall be taken as a certificate of the undersigned Judge of said District Court, being the same Judge who presided over the trial of said cause, and such bill of exceptions consists of and contains all papers, pleadings, testimony, proceedings and exceptions filed, presented, had and

done in said cause, and all of the matters upon which said judgment of December 15th, 1922, is based, and of all matters and things necessary and proper for determination of the questions involved herein, or raised, or attempted to be raised by said writ of error.

I further certify that this cause was tried at the November, 1922, Anchorage Term of this court; that said term of court is still alive, having been adjourned by order of Court made December 30, 1922, to March 5, 1923; and the bill of exceptions herein is settled and signed this day at the Valdez term of this court because court is now in session at Valdez and not at Anchorage.

Done at Valdez, Alaska, this 1st day of March, 1923.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 1, 1923.
W. N. Cuddy, Clerk. By S. I. Hemple, Deputy.

Entered Court Journal, No. 13, p. No. 800. [52]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Assignment of Errors.

Comes now the defendant, C. F. Peterson, in the above-entitled action, and makes and files the following assignment of errors, upon which the defendant will rely in the prosecution of his writ of error herein:

First. The Court erred in overruling the objection of the defendant to the introduction of any testimony in the cause, and proceeding to the trial of the same upon the complaint in said cause, as follows:

“Mr. RAY.—Defendant objects to the introduction of any testimony of the witness, after being sworn and now on the stand, on the ground that this Court is without jurisdiction to try the case on the complaint on file here: First, on the ground that it is in violation of the rights of the defendant as guaranteed to him under the fifth amendment to the Constitution of the United States providing that no prosecution for a felony may be had except on the presentment of a grand jury; and, second, the complaint on which this charge is based is signed ‘C. W. Mossman,’ not ‘C. W. Mossman, deputy marshal,’ and is, therefore, invalid.

In view of the provisions of Sec. 1891, R. S., that ‘The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in

every Territory hereafter organized as elsewhere within the United States,' it is our contention that the Alaska Bone Dry Law being a statute of the United States, and the term of imprisonment on a conviction under it may be more than one year, that a case can only be tried after presentment and indictment by a grand jury. I also desire to renew again the plea in abatement which I filed this morning: That the records and files of this court show that for this same offense, with reference to the same intoxicating liquor, this man is now being held to answer before the grand jury, and that the doctrine of merger should apply. I would just like to read from volume 16, C. J., section 10: 'The merger of one offense in another occurs when the same criminal act constitutes both a felony and a misdemeanor. In such a case, at common law, the misdemeanor is merged in the felony, and the latter only is punishable. This doctrine applies [53] only where the same criminal act constitutes both offenses, and where there is identity of time, place, and circumstances. Moreover, the offenses must be of different grades, and the rule does not apply where both offenses are felonies or misdemeanors.'

The COURT.—At this time I will deny the motion. While I think there is something in one point which Mr. Ray has raised I do not think it should be decided hastily and if I should be wrong in denying the motion at this

time the same point can be raised on motion in arrest of judgment. As to the objection to the complaint, I think the description in the body of the complaint of C. W. Mossman, as a deputy United States Marshal is sufficient. Defendant allowed an exception.

Second. The Court erred in permitting the witness Hoffman to testify, over the objection and exception of the defendant, as to the occurrences which were the basis of the prosecution, upon the ground that the witness Hoffman has no search-warrant, which testimony was as follows:

Mr. RAY.—Had you a search-warrant when you went down there?

The WITNESS.—We did not.

Mr. RAY.—The defendant objects to the introduction of any further testimony of the witness as to the defendant or the boat, on the ground that such evidence attempted to be offered is in plain violation of the constitutional rights of the defendant guaranteed him under the fourth and fifth amendments to the Constitution of the United States.

The COURT.—Objection overruled. Exception allowed.

Third. The Court erred in permitting the conversation of the defendant Peterson with the officer Hoffman to be introduced, over and against the objection and exception of the defendant, as follows:

Q. What was said by Mr. Peterson and you at that time?

Mr. RAY.—We object to any conversation had by the defendant and officers at that time.

The COURT.—You may find out whether he was under arrest at the time or whether he made a voluntary statement.

Mr. RAY.—Was Peterson under arrest at the time of your conversation with him?

The WITNESS.—Yes, I think so.

Q. Did you tell him that you would testify as to anything he might say?

A. I did not. [54]

Q. Did you advise him that whatever he said would be used against him on the trial of the case?

A. It was a general conversation.

Q. At no time did you yourself tell him that anything you say might be used against you at the trial of the case.

A. No, sir, nothing like that was said.

Mr. RAY.—We object to the conversation.

The COURT.—Did you offer him any inducement of any kind or try to persuade him to talk?

A. His conversation was voluntary.

The COURT.—The objection is overruled.

Exception allowed.

Fourth. The Court erred in denying the motion of the defendant to strike out the testimony of the witness Hoffman, to which ruling an exception to the defendant was allowed by the Court, as follows:

Mr. RAY.—We ask that the witness Hoffman's testimony be stricken on the ground that the same was obtained, first, in violation of the

constitutional rights of the defendant as guaranteed in the fourth and fifth amendments and, further, that some statement was obtained from the defendant by the officers without his first being warned or advised as to his rights.

The COURT.—The motion is denied. Exception allowed.

Fifth.—The Court erred in permitting the introduction of testimony of the witness Mossman relative to occurrences upon which the prosecution was based, over and against the objection and exception of the defendant, as follows:

Mr. RAY.—Had you a search-warrant when you went down there?

The WITNESS.—No, sir.

Q. You watched the activities of this person for two or three hours?

A. We were not in sight of him all that time.

Q. Well, as you have described in your testimony? A. Yes, sir.

Mr. RAY.—We object to any further testimony from the witness on the stand.

The COURT.—Objection overruled. Exception allowed. [55]

Sixth. The Court erred in denying the motion of the defendant to strike out the testimony of the witness Mossman, to which ruling an exception to the defendant was allowed by the Court, as follows:

Mr. RAY.—We move that the testimony of the witness Mossman be stricken and that the jury be instructed to disregard any testimony

with reference to the defendant Peterson and any boat or the contents taken without a search-warrant first served in violation of the fourth and fifth amendments to the Constitution of the United States.

The COURT. The motion is denied. Defendant allowed an exception.

Seventh. The Court erred in permitting the introduction of testimony of the witness Watson as to a conversation with the defendant at the time of his arrest, over and against the objection and exception of the defendant, as shown by the bill of exceptions:

Q. At that time, and before you went down to the boat—before Mr. Hoffman and Mr. Mossman returned—did Mr. Peterson, the defendant, make any voluntary statements to you in regard to the boat of any kind?

Mr. RAY.—Just a minute, had you a warrant? A. No, sir.

Q. Had you placed him under arrest?

A. No, sir.

Q. Was he under arrest while you were talking to him?

A. I don't know that I told him he was.

Q. You in no manner advised him or warned him that any conversation would be used against him? A. I did not.

Mr. RAY.—We object to any conversation.

The COURT.—Objection overruled. Exception allowed.

Eighth. The Court erred in denying the motion of the defendant for a directed verdict of not guilty,

to the denial of which motion an exception was allowed by the Court, as shown by the bill of exceptions: [56]

Mr. RAY.—The defendant moves to direct a verdict on the grounds:

1. That there is no testimony in this case to prove ownership or possession by the defendant Peterson of the liquor introduced in evidence.
2. That there is no testimony of ownership of the boat in Peterson.
3. That there is no testimony in the case tending to connect the defendant with the commission of this offense, and for the further reason that the testimony sought to be introduced has its basis in an illegal search and seizure in contravention to the Constitution of the United States.

The COURT.—The motion is denied. Defendant allowed an exception.

Ninth. The Court erred in denying the motion of defendant in arrest of judgment, on the ground that the Court was without jurisdiction to render judgment against the defendant.

Tenth. The Court erred in entering judgment in said cause against defendant.

WHEREFORE, the defendant, C. F. Peterson, as plaintiff in error, prays that the judgment and sentence of the District Court for the Territory of Alaska, Third Division, made and pronounced

on the 15th day of December, 1923, may be reversed, set aside and vacated.

L. V. RAY,
Attorney for Plaintiff in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 2, 1923. W. N. Cuddy, Clerk. By _____, Deputy.

Service of the foregoing assignment of errors, by receipt of copy thereof, admitted this 2d day of November, 1923.

JULIEN A. HURLEY,
Assistant United States Attorney." [57]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff,
against

C. F. PETERSON,
Defendant.

Petition for Writ of Error.

Comes now the above-named defendant C. F. Peterson, and says: That on the 15th day of December, 1922, this Court entered judgment against the defendant upon a verdict of guilty of the offense of having intoxicating liquor in his possession at Anchorage, Alaska, on the 21st day of September, 1922, in violation of the Act known as "An Act to Pro-

hibit the Manufacture or Sale of Alcoholic Liquors in the Territory of Alaska and for Other Purposes," approved February 14, 1917 (said Act being commonly known as the Alaska Bone Dry Law), directing the imprisonment of the said defendant for a period of one year in the federal jail at Anchorage, Alaska, and also to pay a fine of One Thousand Dollars, and in lieu of and failure to pay such fine to serve one day for every Two Dollars of such fine until the same is satisfied;

That in said judgment, and in the proceedings had prior thereto, certain errors were committed to the prejudice of the defendant, all of which more fully appear in the assignment of errors, which is filed with this petition. [58]

WHEREFORE the defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the errors so complained of, and that the transcript of the record, testimony, proceedings, and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may be proper therein.

L. V. RAY,
Attorney for Defendant.

Service of the above petition for writ of error admitted this 2d day of November, 1923, by receipt of copy thereof.

JULIEN A. HURLEY,
Assistant United States Attorney.

Filed in the District Court, Territory of Alaska,
Third Division. Nov. 2, 1923. W. N. Cuddy,
Clerk. By _____, Deputy. [59]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff,
against
C. F. PETERSON,
Defendant.

Order Allowing Writ of Error.

On this 2d day of November, A. D. 1923, came the defendant herein, by his attorney, and filed and presented to the Court his petition praying for the allowance of a writ of error and the assignment of errors intended to be urged by him; praying, also, that a transcript of the record, testimony, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises;

And, it appearing to the Court, the said defendant has heretofore filed herein a duly approved appearance or bail bond, and also a duly approved cost bond.

NOW, THEREFORE, in consideration of the premises, and the Court being fully advised,—

IT IS ORDERED that the aforesaid writ of error be, and the same is hereby allowed.

IT IS FURTHER ORDERED the duly approved bond heretofore filed in this cause by the defendant shall operate as a supersedeas, or stay of sentence. [60]

And IT IS FURTHER ORDERED that a transcript of the record, testimony, files and proceedings in this cause, save as modified by the order of this Court relative to certain of the original exhibits introduced in evidence in said cause, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

E. E. RITCHIE,
District Judge.

Filed in the District Court, Territory of Alaska, Third Division. Nov. 2, 1923. W. N. Cuddy, Clerk. By _____, Deputy.

Entered Court Journal 14, page No. 11. [61]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

· against

C. F. PETERSON,

Defendant.

Undertaking for Costs.

A judgment having been given on the 15th day of December, 1922, whereby the above-named defendant, C. F. Peterson, was found guilty of the offense of having intoxicating liquor in his possession at Anchorage, Alaska, on the 21st day of September, 1922, in violation of the Act known as "An Act to Prohibit the Manufacture and Sale of Alcoholic Liquors in the Territory of Alaska and for Other Purposes," approved February 14th, 1917, and sentenced to serve a term of one year in the federal jail at Anchorage, Alaska, and also to pay a fine of One Thousand Dollars, and having appealed from such judgment or sentence to the United States Circuit Court of Appeals for the Ninth Circuit,

We, P. O. Sundberg, of Anchorage, Alaska, by occupation merchant and Z. J. Loussac, of Anchorage, Alaska, by occupation druggist, hereby undertake that the above-named C. F. Peterson shall pay all costs that may be awarded against him on appeal not exceeding the sum of \$250.00.

IN WITNESS WHEREOF, we have hereunto set our hands this 20th day of October, 1923.

C. F. PETERSON,

Principal.

P. O. SUNDBERG,

Z. J. LOUSSAC,

Sureties.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Div. Nov. 2, 1923. W. N. Cuddy, Clerk. [62]

United States of America,
Territory of Alaska,—ss.

P. O. Sundberg and Z. J. Loussac, the sureties named on the within bond, being severally first duly sworn, each for self and not one for the other, deposite and say: That they are the persons who signed the foregoing undertaking; that they are not attorneys or counselors at law, U. S. Commissioner, U. S. Marshal, Deputy U. S. Marshal or other officer of any court and that they are worth the sum specified in the foregoing undertaking as the penalty thereof over and above their just debts and liabilities and exclusive of property exempt from execution.

P. O. SUNDBERG.
Z. J. LOUSSAC.

Subscribed and sworn to before me this 20th day of October, 1923.

[Notarial Seal] LEOPOLD DAVID,
Notary Public for Alaska, Residing at Anchorage,
Alaska.

My commission expires Sept. 24, 1925.

The foregoing bond approved this 2d day of November, 1923.

E. E. RITCHIE,
District Judge. [63]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
against

C. F. PETERSON,
Defendant and Plaintiff in Error.

Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable E. E. RITCHIE, Judge of the District Court for the Territory of Alaska, Third Division, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in said District Court before you, between the United States of America, plaintiff, and C. F. Peterson, defendant, manifest error hath happened to the great damage of the said defendant C. F. Peterson, as is stated in his petition herein, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the

same, to the United States Circuit Court of Appeals for the Ninth Circuit, within thirty days from the date of this writ, so that you have the same in said court at San Francisco in [64] the State of California, in said Circuit, to be then and there held; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 2d day of November, in the year of our Lord one thousand nine hundred and twenty-three, and in the 148th year of the Independence of the United States of America.

Allowed by:

E. E. RITCHIE,

Judge of the District Court for the Territory of Alaska, Third Division.

Attest: W. N. CUDDY,

Clerk of the District Court for the Territory of Alaska, Third Division.

Entered Court Journal No. 14, page No. 12.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 2, 1923.

W. N. Cuddy, Clerk. [65]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
against

C. F. PETERSON,
Defendant and Plaintiff in Error.

Citation on Writ of Error (Original).

United States of America,
Territory of Alaska,—ss.

The United States of America to the Attorney General of the United States, and to Honorable SHERMAN DUGGAN, United States Attorney for the Territory of Alaska, Third Division,
GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California within thirty days from the date of this writing, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein C. F. Peterson is plaintiff in error, and the United States of America is defendant in error, and show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 2d day of November in the year of our Lord one thousand nine hundred and twenty-three and in the 148th year of the Independence of the United States of America.

E. E. RITCHIE,
District Judge, Territory of Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Div. Nov. 2, 1923. W. N. Cuddy, Clerk. [66]

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct copy of the original citation on writ of error in the case of United States of America against C. F. Peterson,—Criminal No. 881—as the same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said Court at Valdez, Alaska, this 2d day of November, 1923.

[Seal]

W. N. CUDDY,
Clerk.

By _____,
Deputy. [66a]

In the District Court for the Territory of Alaska,
Third Division.

No. 881—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
against

C. F. PETERSON,
Defendant and Plaintiff in Error.

Citation on Writ of Error (Copy).

United States of America,
Territory of Alaska,—ss.

The United States of America to the Attorney General of the United States, and to Honorable SHERMAN DUGGAN, United States Attorney for the Territory of Alaska, Third Division, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California within thirty days from the date of this writing, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein C. F. Peterson is plaintiff in error, and the United States of America is defendant in error, and show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 2d day of November, in the year of our Lord one thousand nine hundred and twenty-three, and in the 148th year of the Independence of the United States of America.

E. E. RITCHIE,
District Judge, Territory of Alaska.

Service acknowledged this 2d day of November, 1923, by receipt of a certified copy of citation.

JULIEN A. HURLEY,
Assistant U. S. Attorney. [67]

In the District Court for the Territory of Alaska,
Third Division.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Territory of Alaska,
Third Division,—ss.

I, W. N. Cuddy, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing, and hereto annexed 69 pages, numbered from 1 to 69 inclusive, are a full, true and correct transcript of records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that this transcript is made in accordance with the defendant's praecipe on file herein.

I FURTHER CERTIFY that the foregoing transcript has been prepared, examined and certified to by me on behalf of the defendant, plaintiff in error, and that the costs thereof, amounting to \$18.00 have been paid to me by L. V. Ray, Esq., attorney for the defendant and plaintiff in error.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3d day of November, A. D. 1923.

[Seal]

W. N. CUDDY,
Clerk. [68]

[Endorsed]: No. 4147. United States Circuit Court of Appeals for the Ninth Circuit. C. F. Peterson, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed November 17, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeal
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.